

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: JOHN MARSHALL MAY, Respondent
Arkansas Bar ID#2000039
CPC Docket No. 2008-002

FILED

APR 16 2008

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Liz and Larry Shaw during 2007. The information related to the representation of Larry Shaw, Jr., by Respondent in 2006.

On January 17, 2008, Respondent was served with a formal complaint, supported by an affidavit from Liz and Larry Shaw. Respondent filed a timely response to the matter and, pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, the matter proceeded to ballot vote before Panel A of the Committee.

The information before the Committee reflected that on April 27, 2006, Liz and Larry Shaw retained John Marshall May, an attorney practicing law primarily in Little Rock, Arkansas, to properly file a Clemency Application for their son, Larry Shaw, Jr. Mr. and Mrs. Shaw saw Mr. May's name in a newspaper advertisement identifying him as a Criminal Attorney. Based on the advertisement they called him to schedule an appointment.

Mr. May requested a fee of \$750 to be paid in advance of his representation. The Shaws paid the fee during the first meeting with Mr. May. Even though Mr. May had never previously represented the Shaws or their son, he presented no written fee agreement to them. Larry Shaw, Jr. had already obtained the forms and instructions to file the clemency himself. However, it was very important to him and his family that everything be prepared correctly the first time so they

wanted to hire an experienced attorney to ensure that the request was properly prepared. Mr. May explained that he had prepared and filed many Requests for Clemency. He stated that he would properly prepare the forms, notarize them and mail them to the Clemency Board.

There was never any discussion about Mr. May "assisting" or "advising" in filing the matter. The Shaws definitely wanted him to file the matter and prepare the documents appropriately. They were willing to assist him by completing as much of the paperwork as they could and at his suggestion, obtaining as many letters of support as they could from family and friends.

Mr. May provided the Shaws with a set of papers to complete "for his information". He instructed them to complete as much as they could and informed them that he had all of the necessary forms on his computer. He also advised the Shaws that he would obtain the information which they were unable to provide and transfer the information onto his computer when the "rough draft" was returned to him. The Shaws had read the directions and knew that the Application had to be in blue or black ink, but they wrote in pencil because what they filled out was just a "rough draft" for his use.

The Shaws, along with their son, completed as much of the Request for Clemency Application as they could within a week or two of the initial meeting. They also printed off as much information as was available on the Arkansas Department of Correction inmate website regarding Larry's current conviction, etc. Mr. May's services, as they understood it, included making sure all questions had been properly answered, making certain that the requested information which they did not have access to regarding prior charges was obtained, and properly preparing the actual Request for Clemency to be filed with the Board.

The Shaws requested the support letters from friends and family in early May, but it was July before all were received. At no time did Mr. May ever provide them with a definite date by which they needed to get the letters back to him. In fact, he said that if necessary, he could send the Request for Clemency in without the letters and send the letters at a later date although he preferred to send in everything at one time.

The Shaws did not keep a record of the exact date that they took the rough draft of the Application to Mr. May, but mid-May to May 25th was thought to be very close to the date. Mr. May did provide a medical authorization for Larry Shaw, Jr. to sign. The form was taken to State Police headquarters where Larry, Jr., signed it. The Shaws took the signed form back and slid it under Mr. May's door the day after he gave it to them. They never left anything outside of Mr. May's office. According to the Shaws, they would never have left anything outside his office door as that is a public place.

As September arrived, they were anxiously awaiting some word. During the first of October, Larry, Jr., received a package in the mail from the Clemency Board containing the penciled-in, handwritten rough draft papers that he and his parents completed, along with the letters of support that were provided, and a letter from the Board stating that they could not accept Requests for Clemency written in pencil. The Shaws were devastated, because Mr. May had done absolutely nothing except put everything they provided in an envelope and mail it. All of what they had tried to do was in vain because there was no time left for them to get the request to Governor Huckabee before he went out of office.

At that point in time, the Shaws just wanted to have their money returned and to start over again. Mr. May was called. A message was left requesting a refund since he did not provide the

services he was paid to provide. Mr. May called back and left a message placing the blame on the Shaws stating that they were late providing him the letters of support so he did not have time to look at everything before mailing the application. Larry Shaw, Jr. also wrote Mr. May a letter requesting that he refund his parents' money or he would file a complaint.

The information provided from the Board to Larry Shaw, Jr. demonstrates that Mr. May notarized the forms and also completed a portion in ink but did not actually prepare the entire form in ink as required.

In responding to the Formal Disciplinary Complaint, Mr. May denied that the Shaws came to see him as the result of a newspaper advertisement and asserted it was because they were referred by another attorney. Mr. May also stated that the Shaws misrepresented the scope of representation and said that he only charged one-half of his standard clemency fee because he was only advising them on the process.

Mr. May explained that the Shaws wanted Governor Huckabee to handle the application so they were told of the cut-off date for returning the forms to him. They missed the cut-off date and he believed Mrs. Shaw when she allegedly told him everything was in order so he mailed the forms.

Mr. Shaw also denied making a false statement to the Office of Professional Conduct in its investigation of this matter. He explained he made a clerical error in addressing a date in issue in this matter.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. May's conduct violated Rule 1.1, because he was not thorough enough in his representation of Larry Shaw, Jr. to be certain that he completed the form provided to him for Request for Clemency Application in ink as required by the regulations of the Parole Board. Rule 1.1 requires that a lawyer provide competent representation to a client, including the thoroughness reasonably necessary for the representation.

2. That Mr. May's conduct violated Rule 1.2(a) because although he was hired to properly prepare and file the Request for Clemency Application, he notarized and mailed one prepared in pencil which is not allowed by the regulations applying to Requests for Clemency Application. Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, consult with the client as to means by which they are to be pursued.

3. That Mr. May's conduct violated Rule 1.5(b) because even though he had never previously represented the Shaws in any legal matter, he failed to properly explain the scope of representation as he asserted it was to them, in writing, or otherwise, within a reasonable time after commencing the representation. Rule 1.5(b) requires, in pertinent part, that the scope of representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate.

4. That Mr. May's conduct violated 8.1(a) when he provided a false statement concerning when he sent the Request for Clemency Application for Larry Shaw, Jr., in the written communication he provided to the Office of Professional Conduct in October 2007 and

when he provided a false statement concerning what he did with the Request for Clemency Application when he received it from the Shaws in that he wrote certain portions of it in ink and notarized it before mailing it in the written communication he provided to the Office of Professional Conduct in October 2007. Rule 8.1(a) requires, in pertinent part, that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact.

5. That Mr. May's conduct violated Rule 8.4(c) when he was not honest when he advised the Office of Professional Conduct that he mailed the "unreviewed" Request for Clemency Application in mid to late August 2006 and when he was not honest when he stated that he did not review the packet of materials provided to him by the Shaws since he did complete a portion of it in ink and notarize it on July 26, 2006. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that John M. May, Arkansas Bar ID#2000039, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.C of the Procedures, Mr. May is required to make restitution for the benefit of Liz and Larry Shaw in the amount of \$750. In addition, Mr. Mays is assessed the costs of this proceeding in the amount of \$50 pursuant to Section 18.A. of the Procedures. The restitution and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within

thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the
Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: March 21, 2008